

D.P.U. 94-163

Petition of the Board of Selectmen of the Town of Great Barrington and over twenty customers of New England Telephone and Telegraph d/b/a NYNEX, pursuant to Chapter 159, § 24 of the General Laws, requesting that NYNEX provide the same local calling area to all customers residing within the boundaries of the Town of Great Barrington.

Appearances: Barbara Anne Sousa, Esq.
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Boston, Massachusetts 02107
FOR: NEW ENGLAND TELEPHONE & TELEGRAPH
d/b/a
NYNEX

-and-

Honorable Christopher J. Hodgkins
Representative
Commonwealth of Massachusetts
House of Representatives
State House, Room 43
Boston, Massachusetts 02133
Intervenor

-and-

Honorable Jane M. Swift
Senator
Commonwealth of Massachusetts
State Senate
State House, Room 407
Boston, Massachusetts 02133
Intervenor

I. INTRODUCTION

On September 20, 1994, pursuant to G.L. c. 159, § 24, the Department of Public Utilities ("Department") received a complaint from over twenty customers of the New England Telephone and Telegraph Company d/b/a NYNEX ("Company"), who are residents of the Village of Housatonic, to establish a single primary calling area ("PCA")¹ for customers residing in the Town

¹ The PCA for any particular NYNEX exchange is defined as all exchanges that a customer who subscribes to basic unlimited exchange service can call without incurring a usage (toll or local per-message/per-minute) charge. See Nynex, D.P.U. 89-300, at 52 (1990).

of Great Barrington.² The Town of Great Barrington and the Village of Housatonic have different exchanges.³ The Great Barrington primary calling area consists of the Great Barrington exchange and the contiguous exchanges of Sheffield, Sandisfield, Otis, Lee, Stockbridge, and Housatonic. The Housatonic primary calling area consists of the home exchange of Housatonic and the contiguous exchanges of Stockbridge, West Stockbridge, and Great Barrington. The complaint was docketed as D.P.U. 94-163.

After due notice, the Department held a public hearing in Housatonic on January 13, 1995. The Department granted the petitions for leave to intervene filed by Senator Jane M. Swift and Representative Christopher Hodgkins. Several residents of Housatonic testified at the hearing and expressed a desire for the creation of a single PCA for the town of Great Barrington. Representative Hodgkins and the Town Manager for Great Barrington, Joseph Kellogg, also testified at the hearing. On March 1, 1995, the Company filed the testimony of Philip Wood, Director of Regulatory Planning. Mr. Wood's testimony is Exhibit NYNEX-1. On June 19, 1995 Representative Hodgkins filed a response to Mr. Wood's testimony.

II. POSITIONS OF THE PARTIES

A. Complainants

² The Town of Great Barrington is comprised of Great Barrington and the Village of Housatonic.

³ A telephone exchange is a geographic unit established for the administration of telecommunications service in a specific area. Generally, it consists of one or more central switching offices, the associated wire, and cable plant used in furnishing telephone service within that area (Exh. NYNEX-1, at 2-3).

At the public hearing, Housatonic residents contended that Housatonic should be part of the Great Barrington exchange because Housatonic shares the same educational system and town government as Great Barrington and because Housatonic pays taxes to Great Barrington (Tr. at 5, 6). The Town Manager stated that because Great Barrington is one community geographically, politically and socially, Housatonic residents should enjoy the same calling privileges as the other residents of Great Barrington (id. at 9). The Town Manager differentiated the instant case from other cases involving expanding PCAs because Housatonic is part of Great Barrington not "some twenty or thirty minutes away" (id. at 8).

B. The Company

NYNEX stated that the existing local service configuration is consistent with statewide provisions of basic local telephone exchange service as established in D.P.U. 89-300 and is, at a minimum, just, reasonable, and proper (Exh. NYNEX-1, at 7, 9). The Company stated that in order to avoid disruption to local and toll rate structures, it does not foresee changing the calling area of Housatonic exchange customers or any other exchange (id. at 16).

NYNEX stated that it has taken action to reduce toll rates for customers in Housatonic and the rest of Western Massachusetts, by introducing two optional calling services that offer customers reduced toll rates, and that such rates are among the lowest in the United States, (id. at 11, 12).

III. STANDARD OF REVIEW

Under the provisions of G.L. c. 159, §16, the Department may order NYNEX to make

changes in service when the Department finds such service to be "unjust, unreasonable, unsafe, improper, or inadequate." Before ordering changes, however, the Department must consider "the relative importance and necessity of the changes ... the financial ability of the carrier to comply with the requirements of the order and the effect of such other changes, if any, as may be deemed by the Department to be of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public." G.L. c. 159, § 16.

IV. ANALYSIS & FINDINGS

Since the 1970's, the Department has received many requests to expand the PCAs of exchanges in all parts of the Commonwealth. For many years, the Department's decisions concerning PCAs applied a standard that focused on "community of interest." See, e.g., Sudbury, D.P.U. 18153 (1976); Cheshire, D.P.U. 18836 (1976); Chesterfield, D.P.U. 19140 (1978). In these cases, the Department considered whether the customer had demonstrated a strong need to call the neighboring community or communities for everyday medical, business, occupational and social purposes, and whether toll charges for such calls imposed an unreasonable hardship on the affected customers. Id. Upon making this determination, the Department looked at the financial impact on the Company if it had to remedy the claimed inadequacies of the customers' PCA. Id.

Subsequently, in D.P.U. 89-300, the Department considered the PCA issue on a comprehensive, state-wide basis and developed the existing PCA framework, including the PCA of the Housatonic exchange. D.P.U. 89-300, at 52-73. The Department balanced customers' interests in expansive PCAs against the advantages of a comprehensive rate structure that was cost-based, fair, ensured rate continuity for customers and earnings stability for NET, and

protected universal service. Id. at 69-70. The Department determined after reviewing the relevant costs and balancing the Department's rate structure goals of fairness, rate continuity and protected universal service that a reasonable PCA would consist of the customer's home and contiguous exchanges. Id. The Department concluded that expanding PCAs beyond the home and contiguous exchanges would "violate our goal of economic efficiency by including significant amounts of use that is properly priced at toll rates ... within the unlimited local service rate." Id. at 52-73. The Department also found that increasing the scope of PCAs could, "over time, push [local exchange] rates to much higher levels," which "could make the unlimited service option unaffordable to many customers and might, thus, pose problems for rate continuity." Id. The Department also noted that the expansion of PCAs to permit toll-free calling on a county- or region-wide basis would exacerbate existing disparities among PCAs and move the rate structure further from fair and consistent calling areas. Id. at 69-70.

The Department has relied on D.P.U. 89-300 when deciding recent PCA cases. See Northern Berkshire, D.P.U. 90-308; Southern Berkshire/Pittsfield, D.P.U. 90-277. In D.P.U. 90-277, the Department further noted that it was not reasonable or cost-effective to require NYNEX to redesign exchanges solely for the purpose of matching the existing municipal boundaries. Southern Berkshire/Pittsfield, D.P.U. 90-277, at 7 (1990).

The Supreme Judicial Court ("SJC") has addressed the PCA issue and held that the Department's determination of that issue was not arbitrary and capricious simply because a PCA resulted in perceived inequities. Bosley v. Department of Public Utilities, 417 Mass. 510, 513 (1994).⁴ The Court found that the adoption of home and contiguous exchanges as first set forth

in D.P.U. 89-300 is a proper balance of customers' interest in expanding PCAs against the advantages of a comprehensive rate structure and earnings stability for NYNEX and protected universal service. Id. The Court stated that the Department's proffered reason -- a comprehensive system and the over-all reduction in rates provided by that system -- amply justifies the Department's decision. Id. at 514. The Court also noted that the Department is better equipped to balance the competing interests in such cases and affords it substantial deference to do such. Id.

In arguing for an expansion of the PCA for the Housatonic exchange, the complainants have raised similar arguments to those raised and rejected in the past -- that Housatonic should be in the same PCA with Great Barrington because they share a community of interest, town government, and an educational system among other things. The petitioners have failed to distinguish the case before us from previous cases and thus failed to meet the burden of proof to justify a larger PCA. Therefore, the Department does not find NYNEX's service to be unjust, unreasonable, improper, or inadequate pursuant to G.L. c. 159 § 16. A change in the existing framework would disrupt the Department's goals of economic efficiency, fairness, simplicity, and

⁴ In that case, the plaintiff, Representative Daniel Bosley, asked the SJC to modify or set aside D.P.U. 90-308, an order that denied Bosley's request to expand the PCA of the North Adams telephone exchange to include toll-free calling to Pittsfield. The petitioners in the case before the Department made two arguments: first, that NYNEX customers served by an exchange not contiguous to Pittsfield have no less "community of interest" with Pittsfield than other towns that are served by an exchanges contiguous to Pittsfield; and second, incurring toll charges for calls to Pittsfield unreasonably burdens the customers' social, commercial, and governmental relationships and activities (id. at 9).

consistency in the statewide concept of a PCA. D.P.U. 89-300, at 69-70.

V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the complaint filed on September 20, 1994 is hereby denied.

By Order of the Department,

Mary Clark Webster

Commissioner

Janet Gail Besser
Commissioner

Appeal as to matters of law from any decision, order, or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order, or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order, or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).